

The award was entered in this case on September 30, 1987, and affirmed by the Director on December 19, 1988. The award was for 46.86 weeks of temporary total disability which had been paid prior to the award and permanent partial disability payments at the rate of \$39.79 per week for 368.14 weeks with 114.14 of those weeks due at the time of the award.

On July 5, 1989, claimant's counsel sent a registered letter to respondent, to respondent's counsel, and to the insurance carrier. That letter demanded immediate payment under the award of \$2,774.88. The letter also stated it was to be considered a demand pursuant to K.S.A. 44-512a. During the next year and one-half, respondent's counsel sent claimant's counsel eight letters asking claimant's counsel to explain how he arrived at this figure. The record contains no indication claimant's counsel responded until October 1993 when claimant's counsel wrote a second letter, this time indicating the amount unpaid was \$2,237.62. Respondent's counsel again asked claimant's counsel to explain how he arrived at the figure. In January 1994, claimant's counsel sent a week-by-week accounting of amounts paid. On December 6, 1994, claimant's counsel sent another demand letter. On December 15, 1994, respondent paid the \$2,237.62.

K.S.A. 1987 Supp. 44-512a states the requirements for written demand which is the first step necessary before requesting an order for penalties. Subsection (a) of K.S.A. 44-512a states that penalties may be imposed if:

- (1) Service of written demand for payment, setting forth with particularity the items of disability and medical compensation claimed to be unpaid and past due, has been made personally or by registered mail on the employer or insurance carrier liable for such compensation and its attorney of record; and
- (2) payment of such demand is thereafter refused or is not made within 20 days from the date of service of such demand.

The record reflects that the first letter sent by claimant's counsel, the letter sent July 5, 1989, was sent by registered mail to respondent's counsel, to the insurance carrier, and directly to respondent. The letter states in pertinent part:

You and each of you are hereby notified pursuant to K.S.A. 44-512(a) [sic] and you have unreasonably failed to timely pay workers' compensation benefits required by law and pursuant to the order of George Corcoran, Administrative Law Judge, dated the 30th day of September, 1987, calling for the payment of permanent partial disability benefits from and after the 27th day of August, 1987, and the order of the director confirming that award.

By my calculation, there is presently due under said award the sum of \$2,774.88 which we demand you pay immediately.

Additionally, George Corcoran's order called for the payment of expenses itemized in paragraph seven in the judge's finding, and the additional sum of \$350.00 was ordered as unauthorized medical. Demand is hereby made for the immediate payment of those medical expenses and unauthorized medical expenses.

The Board finds this notice sufficiently specific to satisfy the requirements of K.S.A. 44-512a. There should have been no doubt that the \$2,774.88 was a demand for payment of past due permanent partial disability payments and itemized medical expenses required by the award. The award did not require payment of any additional temporary total disability benefits. The Board notes the amount later, in 1994, determined to be due was \$2,237.62. This fact does not, however, make the original demand any less specific.

The record also reflects that respondent did not pay the compensation past due within 20 days from the written demand. Respondent, therefore, may be considered liable for penalties from 20 days after the demand or July 26, 1989, to the date the payment was made on December 15, 1994. There would be 281.29 weeks of penalties owed at a maximum of \$100 per week for a maximum penalty of \$28,129.

But in this case the Board concludes the actions of claimant's counsel contributed to the delay. While the Board considers the demand sufficiently specific, claimant's counsel did not thereafter respond to numerous requests for further information. The respondent and its insurance carrier would certainly be responsible for knowing how much has been paid and how much is due. However, it appears claimant's original demand may not have been in the correct amount. This is unclear since the difference between the original demand of \$2,774.88 and the amount later agreed to be owed, \$2,237.62, may have been due to payments made between the 1989 demand and the 1994 payment. In any event, while the Board considers respondent responsible for timely payment of the correct amount, claimant's counsel should have promptly cooperated with the request for additional information and failure to do so mitigates against assessing the full penalty.

The Board finds that under the unique circumstances presented in this case, the penalty should be reduced to \$10 per week for a total of \$2,812.90 which is hereby ordered paid by respondent and its insurance carrier for failure to timely pay amounts due under the award.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Decision entered by Administrative Law Judge Robert H. Foerschler on February 3, 1998, should be, and is hereby, modified to impose a penalty of \$2,812.90 to be paid by respondent and its insurance carrier.

IT IS SO ORDERED.

Dated this ____ day of September 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James M. Sheeley, Kansas City, KS
Timothy G. Lutz, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director